



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

STATEHOUSE * ROOM 116 * DES MOINES, IOWA 50319 * (515) 281-3084/3355
FAX (515) 281-5995/4424 * E-MAIL jroyce@legis.state.ia.us

THE RULES DIGEST

March, 2004

Scheduled for committee review
MONDAY, March 8th 2004
Statehouse Room #116

Reference
XXVI IAB No. 16(02/04//04)
XXVI IAB No. 17(02/18/04)
XXVI IAB No. 18(03/03/04)

HIGHLIGHTS IN THIS ISSUE:

<i>BONDING REQUIREMENTS: FEEDER PIGS, Agriculture & Land Stewardship</i>	1
<i>REPORTING MISCONDUCT, Educational Examiners</i>	2
<i>VOLUNTEER OMBUDSMAN, Elder Affairs</i>	2
<i>ASSISTED LIVING PROGRAM, Elder Affairs</i>	3
<i>CONCRETE MANURE STORAGE, Environmental Quality Commission</i>	4
<i>PHOSPHORUS INDEX, Environmental Quality Commission</i>	5
<i>PHYSICIAN ASSISTANT, Medical and Physician Assistant Board</i>	6
<i>DRIVERS EDUCATION, Transportation Department</i>	7

AGRICULTURE DEPARTMENT

No Rep

Feeder pig sales & movement, IAB Vol. XXVI, No. 17,
ARC 3158B, ADOPTED.

§202C.4, 2003 Supplement establishes an expanded financial surety requirement for feeder pig dealers; this surety must be either a bond or an irrevocable letter of credit. It is intended to provide a secured asset for the recovery of damages incurred by a feeder pig purchaser who suffers damages because of sick or diseased pigs obtained from a feeder pig dealer. Previous law required a surety bond of \$10,000 as a condition of licensure. Under the Act licensees must now give evidence of financial responsibility, in the form of a larger surety bond. The amount of the bond varies with the volume of business by each individual dealer.

The bond must be at least \$50,000 and not more than \$300,000. The rules themselves are not particularly controversial, but the surety

requirements are controversial. Commentators contend that the surety bonds are extremely difficult to obtain at an affordable cost and some bonding companies have expressed unwillingness to write the necessary bonds.

COLLEGE AID COMMISSION

9:50

Approval of postsecondary schools, IAB Vol. XXVI, No. 17,
ARC 3156B, ADOPTED.

§261B.3, Code 2003, requires that a school which conducts one or more courses of instruction in this state must register annually with the secretary of state. In order to register a school must be "approved for operation" by the college student aid commission (§261B.3A). This rulemaking requires out-of-state schools to meet the same certification, accreditation, and approval standards established for Iowa colleges. The proposal comes in response to a growing trend where out-of-state educational institutions establish satellite programs

THE RULES DIGEST

-2-

in urban areas, targeting non-traditional students. The effect of the proposal would be to require these facilities to provide such things as ongoing administration, library access and competent instructors. Legislation is also pending on this subject. In part, House Study Bill 571 would provide the commission with explicit statutory authority to establish approval standards for these schools.

EDUCATION DEPARTMENT

9:40

Teacher quality program, IAB Vol. XXVI, No. 16, ARC 3137B, ADOPTED.

This filing requires that each school district incorporate a district career development plan into its' comprehensive school improvement plan, as required in §284.6, 2003 Code. The plan is developed on the local level and must include theory, demonstration, practice, observation, collaboration, and the study of implementation. Under this overall plan individual teacher plans are then developed by that teacher, in consultation with the teacher's evaluator. These individual plans are already outlined in rule 83.6(1). Under these rules a development provider may be the district, a higher education institution, or a public or private entity.

EDUCATIONAL EXAMINERS BOARD

No Rep

Mandatory reporting concerning misconduct, IAB Vol. XXVI, No. 17, ARC 2929B, ADOPTED.

At one time the boards authority to consider licensee discipline was largely limited to actual complaints made to the board by local districts or parents. Over the last ten years the boards authority to initiate action on its own motion has increased, to the extent that now the Educational Examiners Board has similar authority to that held by other professional boards.

§272.15, 2003 Supplement is another step in expanding the discretion of the board; it requires local districts report to the board the nonrenewal, termination, or resignation of educators or administrators "*for reasons of alleged or actual misconduct*". Under the law the term "misconduct" is tied to a long list of acts detailed in Iowa Code

§272.2(14)"b", relating to sexual offenses. These reports are kept confidential and the information is not admissible in evidence in any legal proceeding other than licensee discipline. The board will then consider this information to determine whether a licensing disciplinary proceeding should be instituted.

Under the proposed rules the report must be filed within 60 days of the action, using forms established by the board; the executive director of the board shall review the information reported to determine whether a complaint investigation should be initiated. In making this determination the rule sets out a number of factors to be considered:

- the nature and seriousness of the reported misconduct in relation to the position sought or held,
- the time elapsed since the misconduct, the degree of rehabilitation,
- the likelihood that the individual will commit the same misconduct again,
- and the number of reported incidents of misconduct.

EDUCATIONAL EXAMINERS

No Rep

Educator requirements:K-6/7-12 reading, IAB Vol. XXVI, No. 18, ARC 3198B, NOTICE.

Current provisions briefly outline the educational requirements to teach k-6 reading. In essence 20 semester hours of education are required. Commencing in 2007 a far more detailed requirement will be in place. Under this proposal 24 semester hours are required and the teacher must demonstrate knowledge in nine general areas, each of these areas has a number of sub-categories.

The 7-12 reading format is similar. The current 20 semester hours of education is raised to 24, and nine general areas of knowledge are specified, with detail provided in sub-categories.

ELDER AFFAIRS DEPARTMENT

11:10

Volunteer ombudsman, IAB Vol. XXVI, No. 16, ARC 3143B, ADOPTED.

This new program provides for the certification of volunteer long-term care ombudsmen. It is an unpaid volunteer program is created in 42 USC Ch.

THE RULES DIGEST

-3-

35. Any person may volunteer, with preference given to applicants who already are resident committee advocates. The proposal sets out a lengthy list of conflict of interest restrictions; basically applicants cannot be employed or have an immediate family member employed by a care facility or have a financial interest in a facility. Applicants are also subject to a criminal background and abuse check. Before final certification applicants must complete 24 hours of training; this training includes the history of the program, residents rights, state and federal law, including an overview of the regulatory process. Initial certification is for one year, with ten hours of continuing education. Renewals are for two years and six hours of continuing education are required.

These certificates are treated as a license and can be revoked for cause, such as: breach of confidentiality, falsification of the application, failure to obtain continuing education, etc. No contested case hearing is provided for a revocation.

A volunteer serves as an assistant to the long-term care ombudsman and may enter into any care facility unannounced. The volunteer *may* have access to medical and personal records if the volunteer has the permission of the resident or the residents representative; or if access to the records is necessary to investigate a complaint and the volunteer obtains approval of the ombudsman; or if the information is sought by court order. However, only the ombudsman will have access to adult abuse case information.

Following notification of the facility staff the volunteer may speak privately with any resident willing to do so. Generally, the duties of a volunteer include:

- conducting initial inquiries regarding complaints;
- providing follow-up visits on cases investigated by the ombudsman;
- attending, assisting with, or providing technical assistance to resident and family council meetings;
- making follow-up visits to a facility;
- tracking, monitoring and following up on facility performance;

- identifying concerns in a facility and discussing those concerns with the chair of the resident advocate committee;
- completing all reports in a timely manner.

ELDER AFFAIRS DEPARTMENT

11:10

Assisted living programs, IAB Vol. XXVI, No. 16, ARC 3146B, NOTICE.

This proposal is substantially similar to rules noticed in December. Following public comment the board has slightly revised and re-noticed that proposal.

The rules establish requirements for assisted living program certification and standards for the programs themselves. An appeal process for involuntary tenant transfer is also established. All assisted living programs must be certified. Certification is automatic for those programs accredited either by the Rehabilitation Accreditation Commission (CARF) or by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). Certification may be for up to three years. To retain this certification privilege national accreditation must be maintained at all times. Nonaccredited program must follow the certification process set out in the rules. An application for a nonaccredited program must be evaluated by the department of inspections and appeals (DIA) within 20 days; the program may be given a one year conditional certification. Re-certification requires monitoring and evaluation by DIA. If successfully, the nonaccredited program may be certified for two years.

Prior to the construction or remodeling of a facility the DIA must review the blueprints to ensure compliance with the life safety code and other structural requirements. The rules set out in detail square footage and other requirements both for new and remodeled construction. Each unit must have a separate bathroom.

As with the prior rules each applicant must be evaluated by a health care professional to determine the persons "*functional, cognitive and health*", first, prior to admission to the program,

THE RULES DIGEST

-4-

then within 30 days following occupancy, and at least annually thereafter.

Perhaps the most significant portion of this filing is the eligibility criteria and the procedures for involuntary transfer. The eligibility criteria are those used for day care; no person may enter or remain in assisted living if the person :

- Is bed-bound;
- Requires routine three-person assistance with standing, transfer or evacuation;
- Is dangerous to self or others;
- Is in an acute stage of alcoholism, drug addiction, or uncontrolled mental illness; or
- Is under age 18;
- Requires more than part-time or intermittent health-related care;
- On a routine basis has unmanageable incontinence.

In response to earlier discussions concerning flexibility in the admissions and retention process, these rules do have a process allowing the possibility of a waiver from the occupancy and retention criteria for an individual tenant on a *"time-limited basis"*. The rules set out a formal application process. The DIA will use three criteria to evaluate the request:

- It is the informed choice of the tenant or the tenant's legal representative, if applicable, to remain in the program; and
- The assisted living program is able to obtain the staff necessary to meet the tenant's service needs in addition to the service needs of the other tenants; and
- The waiver shall not jeopardize the health, safety, security or welfare of the tenant for whom the waiver is being requested, program staff, or other program tenants.

The rules also establish a process for involuntary transfer. If the program initiates the transfer, the tenant must be given notice, a statement of the reasons behind the action, and an opportunity to appeal. If the transfer is the result of a monitoring evaluation or complaint investigation by DIA the program, the affected tenant and those providing services to the tenant will have an opportunity to provide comments and information concerning the proposed action; ultimately the tenant may file an administrative appeal through the department.

Both the service plan requirements, the medication requirements and the dietary requirements are substantially similar to those for day care. An individual service plan must be developed for each tenant based on the initial evaluations conducted during the admissions process. The plan must be updated at least annually and must identify the tenant's needs, the tenant's requests for assistance and the expected outcomes. The plan must also detail any services and care to be provided to the tenant and identify any service providers. The plan must include planned and spontaneous activities based on the tenant's abilities and personal interests.

A program that administers prescription medications or provides health care or health-related care must provide for a registered nurse to monitor, at least every 90 days, each tenant receiving program-administered prescription medications. The nurse must also that health care professionals' orders are current and assess and document the health status of each tenant.

ENVIRONMENT PROTECTION COMMISSION 10:40

Definition of terms, IAB Vol. XXVI, No. 16, ARC 3155B, NOTICE.

This proposal adds a number of definitions to the "prevention of significant deterioration" construction permit program (PSD). These definitional changes are part of an overall effort to simplify the permit program. The new definitions have been developed over time on a case-by-case basis but are now being put in rule for the first time. Most of the new definitions are derived from existing rules.

ENVIRONMENT PROTECTION COMMISSION 10:40

Concrete manure storage, IAB Vol. XXVI, No. 17, ARC 3169B, ADOPTED.

This detailed provision amends a single subrule in 567 IAC rule 65.15. In 2002 legislation called for construction standards for manure storage

THE RULES DIGEST

-5-

structures. The EPC now proposes an upgrade to the existing rules; the revision will be applicable to new structures after March 24th, 2004. The new rules set out a variety of requirements, from new rebar requirements to an increase in the thickness of the floor. The subrule has been significantly modified from the August notice. It now provides for the use of alternative design methods, other than the DNR minimum standards initially proposed in the filing. These alternative design methods include a design prepared and sealed by a PE or an NRCS engineer. This will allow for a more flexible, site-specific design and use of industry-based standards.

An appendix has also been added, setting out design specifications for formed manure storage structures.

ENVIRONMENTAL PROTECTION COMMISSION

10:40

Landfill closure: financial assurance, IAB Vol. XXVI, No. 17
ARC 3168B, ADOPTED.

The EPC revises its existing rules relating to financial responsibility for cleaning up landfills. Iowa Code §455B.306(8)"b" states in part:

"The operator shall maintain closure, and postclosure accounts. The commission shall adopt by rule the amounts to be contributed to the accounts based upon the amount of solid waste received by the facility."

Every landfill must maintain an updated estimate of the cost to properly close the landfill; the steps required to close a landfill are detailed in the rule. Chapter 111 specifies a series of financial mechanisms that can be used to meet the closure requirements. Landfills must also maintain financial assurance for *postclosure* work. The format is similar to that used for the closure regulations.

ENVIRONMENT PROTECTION COMMISSION

10:40

Phosphorus index, IAB Vol. XXVI, No. 17, ARC 3167B,
NOTICE.

Section 459.312, Code Supplement 2003 requires the EPC to establish a "phosphorus index"

setting the manner and timing, on a field basis, of land application of manure from a confinement feeding operation. The index will determine application rates, based on the number of pounds of phosphorus that may be applied per acre and application practices.

Persons who submit an original manure management plan, commencing sixty days after this rule become effective, must include the phosphorus index as part of their original manure management plan and updated manure management plans. Persons who have already submitted manure management plans will have 2 to 4 years before compliance is required.

Under this index an estimate of the number of acres required for manure application is calculated either by dividing the total phosphorus available to be applied by the ability of the corn crop to remove phosphorus; or by totaling the quantity of manure that can be applied to each available field based on application rates determined by the phosphorus index. The phosphorus index must be used on each individual field in the manure management plan. Soil samples must be obtained from each field, in 10 acre segments, at least once every 4 years. Each soil sample must be analyzed for phosphorus and pH.

ETHICS BOARD

No Rep

Miscellaneous revisions, IAB Vol. XXVI, No. 18, ARC
3189B, 3190B, 3191B, NOTICE.

The board proposes several new provisions relating to the treatment of debts and loans by a candidate or a candidates committee. In all cases the debt must be repaid to the lender along with all required public disclosures. The proposal clarifies that a "permanent organization" (i.e.: political party or an interest group) can loan money to a candidate or a committee without being deemed to be engaged in political activity requiring registration. The rules also clarify that campaigns can transfer assets between one another, as long as the fair market value of those assets is paid and the transactions are reported.

THE RULES DIGEST

-6-

The rules also allow a financial institution to make loans to candidates or committees. In addition, a candidate or committee may owe a debt to a corporation, financial institution or insurance company. This provision is significant because §68A.503, 2003 Supplement, specifically prohibits an insurance company, savings and loan association, bank, credit union, or corporation from making a campaign contribution. This rule makes it clear that a bona fide loan is not a contribution.

Other changes clarify that it is permissible to use campaign funds to buy small presents or provide cash bonuses for campaign workers or employ family members as paid workers.

The provisions relating to "independent expenditures" are also re-written. These are expenditures by an entity that is not a candidate or committee that specifically advocates a position in an election. §68A.404 requires that any expenditure in excess of \$750 be reported. Those reporting requirements are set out specifically in the rule.

HUMAN SERVICES DEPARTMENT

10:10

Foster care: transition teams, IAB Vol. XXVI, No. 17, ARC 3185B, NOTICE.

§232.2(4)"f", 2003 Supplement requires that a local service agency, which is preparing a case permanency plan for a child 16 years of age or older, to include a section on services to assist the child in preparing for the transition from foster care to independent living. §235.7, Supplement 2003 states that the purpose of the local transition committees is to review and approve these plans and to identify and address gaps in the services and supports needed to meet the needs of these persons.

MEDICAL BOARD

9:00

Supervision of physician assistants, IAB Vol. XXVI, No. 13, ARC 3042B, SEVENTY DAY DELAY.

In January, 2004 the committee reviewed a filing by the medical board of examiners, relating to the supervisory obligations of a physician; in large part those rules re-drafted existing provisions. Under those rules a physician must be "actively engaged in the practice of medicine in

Iowa" and may supervise no more than two assistants at any one time. Another requirement states that the supervising physician must have sufficient training or experience to supervise a physician assistant in the area of medical practice in which a physician assistant is to be utilized. The rules also require the physician to "adequately" supervise the physician assistant, either in person or by telecommunication.

The committee imposed a 70 day delay on a portion of this filing, based primarily on concerns about the supervision of physician assistants across state lines. It appeared the two professions had different understandings of "actively practicing medicine in Iowa"; members felt the boards needed to improve communications with each other and clarify geographical considerations regarding supervision.

PROFESSIONAL LICENSURE

DIVISION

9:20

Physician supervision, IAB Vol. XXVI, No. 17, ARC 3149B, ADOPTED.

The physician assistant board proposes to revise existing rules which generally relate to the physician assistant's practice; but more specifically relate to the relationship between the supervising physician and the physician assistant. Existing rules provide that medical tasks common to the "physician's practice" may be delegated to the assistant; under the proposed revision any diagnostic and therapeutic medical tasks may be delegated as long as the physician assistant demonstrates proficiency and competence in that area. The revisions also allow broader practice by physician assistants. For example existing rules allow the assistant to perform "office surgical procedures"; the revision would allow the assistant to perform "surgical procedures".

A new provision relates to the status to be given to an instruction by an assistant. Health care providers are to consider the instructions of the physician assistant to be instructions of the supervising physician if the instructions concern

THE RULES DIGEST

-7-

duties delegated to the physician assistant by the supervising physician.

The proposal also re-writes existing provisions relating to remote clinics; i.e., clinics when the physician does not regularly practice. The revisions are substantially similar to the existing provisions, requiring a greater degree of supervision for assistants who have less than one year of practice

PUBLIC HEALTH DEPARTMENT

No Rep

Volunteer health care provider, IAB Vol. XXVI, No. 16, ARC 3149B, ADOPTED.

Pursuant to §135.24, 2003 Code certain health care providers may be given immunity from civil liability when they provide voluntary, free medical or dental services. Under this program the state will defend and indemnify a volunteer health care provider or a free clinic for a damage claim arising from the operation of that program. The rules establish the general framework for participation. Providers include hospitals, clinics, or other health care facilities, health care referral programs, or charitable organizations, free medical, dental, and chiropractic services. House File 557 now adds psychologists, master social workers, independent social workers, marital and family therapists, mental health counselors, and pharmacists to the list of eligible providers.

PUBLIC HEALTH DEPARTMENT

No Rep

Quarantines, IAB Vol. XXVI, No. 16, ARC 3150B, ADOPTED.

These rules implement the recently enacted Chapter 139A, Code Supplement 2003; they are substantially similar to the rules already in place; most of the revised language relates to the imposition of quarantines.

Under the rules a quarantine may be imposed due to the presence of any communicable disease which presents a risk of serious harm to public health and which may require isolation or quarantine to prevent its spread. SARS disease is one example of such a disease. All health care

providers and clinical laboratories must report any communicable disease they discover. The reports are then investigated by either the department or a local board of health. Existing rules and procedures for quarantines are re-written.

The rules set out a series of principles and procedures for imposing a quarantine. The terms of a quarantine must be the least restrictive as necessary to prevent spread of the disease. The site of a quarantine may be a residence or any other place, but it must be clearly identified as a quarantine area. In those cases where a person refuses to comply, the existing rules call for a judicial action to compel compliance; this proposal replaces the judicial process with an administrative hearing to contest the order, with judicial review being available. A quarantine order is enforceable in court and its' violation is a simple misdemeanor.

TRANSPORTATION DEPARTMENT

No Rep

Driver's education, IAB Vol. XXVI, No. 16, ARC 3123B, NOTICE.

In 2002 the legislature transferred the authority to regulate driver's education from the department of education to the department of transportation. Any school district, AEA, merged area school, other agency or individual may offer a driver education course after receiving approval from the department. Courses must provide a minimum of 1800 minutes in classroom instruction, plus 360 minutes in supervised laboratory instruction. Behind-the-wheel instruction is limited to a maximum of 30 minutes per student per session and a maximum of 60 minutes in a single day.

The driver's education teacher must hold a teaching certificate as well as a valid Iowa driver's license that permits unaccompanied driving and have a clear driving record for the previous two years. Persons wishing to provide behind-the-wheel instruction must be at least 25, hold a valid Iowa driver's license that permits unaccompanied driving, have a clear driving record for the previous two years and meet the preparation

THE RULES DIGEST

-8-

requirements set out in the rule. The preparation includes 24 hours of classroom preparation and 12 hours of behind-the-wheel preparation.

Driver's education schools are licensed by the department. Prior to licensing a driver education school, the department shall approve the school's course, classroom instructors and laboratory instructors. Street or highway driving instruction must be provided by a person qualified as a classroom driver education instructor or a person certified by the department and authorized by the board of educational examiners.